Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-742

JEROME MILLER, ET. AL.,

Appellants

v.

MARCEL YOUAKIM, ET. AL.,

Appellees.

On Appeal From the United States Court of Appeals for the Seventh Circuit

JURISDICTIONAL STATEMENT FILED NOVEMBER 23, 1977
PROBABLE JURISDICTION NOTED FEBRUARY 21, 1978
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Appellees.

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

1/21/74 Filed Plaintiffs' Second Amended Complaint Verified for injunctive relief.

4/ 2/73 Filed Defendants' notice of filing motion with Motion to Strike and Dismiss Complaint. (To stand as to Second Amended Complaint.)

4/16/73 Filed Plaintiffs' Motion to Convene Three-Judge District Court.

5/25/73 Filed Order Designating the Honorable John Paul Stevens, Circuit Judge, Honorable Abraham L. Marovitz, District Judge, and Honorable Philip W. Tone, District Judge to serve as members of a Three Judge Court.

2/28/74 Enter Memorandum of Decision (draft) Tone, J.

4/23/74 Filed Notice of Filing; Plaintiffs' Notice of Appeal to the Supreme Court of the United States. pd/$5.00.

3/24/75 Filed certified copy of order of U.S.S.C. dated March 17, 1975 noting probable jurisdiction.

4/ 7/76 Filed slip opinion from the Supreme Court of the U.S. with attached letter.

4/30/76 Filed certified copy of order from U.S. Supreme Court. Judgment vacated with costs; cause remanded to the United States District Court for the Northern District of Illinois for further proceedings in conformity with the opinion of this Court with transmittal letter dated April 28, 1976.

5/ 7/76 Enter order dated May 3, 1976: It appearing that this cause has been remanded for further proceedings and the cause was assigned to the

Calendar of Judge Tone who is no longer a judge of this Court, therefore, IT IS HEREBY ORDERED that this cause be reassigned by lot according to the rules. (JUDGE KIRKLAND) – Parsons, J.

6/11/76 Enter order dated June 10, 1976: Agreed motion for leave to file briefs in excess of 15 pages is granted. Brief for appellants, orief and arguments for defendant-appellees, reply brief for appellants and appendix previously filed in the Supreme Court are hereby filed in this court. Kirkland, J.

6/10/76 Filed plaintiffs' motion for preliminary injunction and for summary judgment.

6/14/76 Filed defendants' notice of filing motion with motion for summary judgment.

7/30/76 Enter order dated 7/27/76: Enter Memorandum Opinion and Order: Plaintiffs' motion for summary judgment is granted. Since plaintiffs have prevailed on the statutory issue, it is unnecessary for this Court to reach the equal protection issue. (Draft) – KIRKLAND, J.

8/24/76 Filed defendants-appellants' notice of filing and proof of service of notice of appeal with notice of appeal attached.

8/25/76 Enter order dated August 24, 1976: Enter judgment and order. Ill. Revised Statutes Chapter 23 §§ 2212.17 and implementing policies and procedures of the Illinois Department of Children and Family Services are contrary to 42 USC §§ 601 and 609 (sic.), implementing federal regulation and Department of HEW, etc., and are therefore invalid under the Supremacy

Clause of the United States Constitution, Art. VI Cla. 2 insofar as they exclude from eligibility or deny "full AFDC-F payments, etc., (DRAFT) Kirkland, J.

9/ 2/76 Filed Notice of Motion & Defendants' Motion for stay of enforcement pending appeal.

9/ 2/76 Enter order dated 9/2/76: Defendants' Motion for stay of enforcement pending appeal is denied. – KIRKLAND, J.

9/27/77 Enter Opinion of Court of Appeals for the Seventh Circuit affirming District Court Order with slight modification.

11/ 3/77 Filed Notice of Filing; Defendants' Notice of Appeal to the Supreme Court of the United States.

2/21/78 Supreme Court of the United States noted probable jurisdiction in this case. Mr. Justice Stevens took no part in the consideration or decision in this matter.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

MARCEL YOUAKIM and LINDA YOUAKIM individually and as foster parents, TIMOTHY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, MARY LOU ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, LARRY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, and SHERRY ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, and all others similarly situated,

Plaintiffs,

vs.

JEROME MILLER individually and as Director of the DEPARTMENT OF CHILDREN AND FAMILY SERVICES and the DEPARTMENT OF CHILDREN AND FAMILY SERVICES, of the STATE OF ILLINOIS,

Defendants.

Civil Action No. 73 C 635

Three-Judge Court Requested

SECOND AMENDED COMPLAINT VERIFIED FOR INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. This is a civil rights class action wherein Plaintiffs seek a permanent injunction barring the State Director of the Illinois Department of Children and Family Services and his successors, employees, or agents, and all other persons in active concert and participation, from enforcing, applying, or executing Illinois Revised Statutes, Ch. 23, §§ 2212.05 and 2212.17 (1971) and Illinois Department of Children and Family Services Placement Manual, Ch. 3, § 5 at 95 through 97 (1972) as written, because said statutes and regulations violate equal protection of the law as guaranteed the Plaintiffs by the 14th Amendment to the United States Constitution. Said statutes and regulations authorize federally-subsidized foster care payments for foster parents who are unrelated to their foster children but deny said payments to Plaintiffs, who are foster parents of minor wards of the State—foster children—related to them.

JURISDICTION

2. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3), (4) which provide for original jurisdiction of this Court in all suits authorized by 42 U.S.C. § 1983 to redress the deprivation under color of State law of any right, privilege or immunity secured by the Constitution of the United States.

3. This suit concerns the denial by Defendants of equal protection of the law as guaranteed the Plaintiffs by the Fourteenth Amendment to the United States Constitution.

THREE-JUDGE COURT

4. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. § 2281, 2284 since Plaintiffs seek an injunction to restrain the Defendant, who is a state officer, from the enforcement, application and execution of State statutes (Ill. Rev. Stats., Ch. 23 §§ 2212.05, 2212.17) and regulations (Illinois, Department of Children and Family Services Placement Manual, Ch. 3, § 5 at 95 through 97), of state-wide applicability on the grounds that said statutes and regulations are in violation of the Constitution of the United States.

PLAINTIFFS

5. Plaintiffs, Marcel Youakim and Linda R. Youakim, husband and wife, are citizens of the United States and have been residing in Des Plaines, Cook County, Illinois, since 1970. They are and have been the foster parents of Linda Youakim's brother, Timothy Robertson since January 7, 1972, and of her sister, Mary Lou Robertson since May 20, 1972. Plaintiff Marcel Youakim is related to Timothy and Mary Lou only by marriage.

6. Plaintiff, Timothy Robertson, is a minor citizen of the United States and has been living with his foster parents, Marcel and Linda Youakim in Des Plaines, Cook County, Illinois, since 1972. He is eight years old and a ward of the State of Illinois.

7. Plaintiff, Mary Lou Robertson, is a minor citizen of the United States and has been living with her foster parents, Marcel and Linda Youakim in Des Plaines, Cook County, Illinois, since 1972. She is ten years old and a ward of the State of Illinois.

8. Plaintiff, Larry Robertson, is a minor citizen of the United States and is and has been living in foster care facilities in the State of Illinois since May, 1969. He is thirteen years old and a ward of the State of Illinois. He does not now live with any other members of his family.

9. Plaintiff, Sherry Robertson, is a minor citizen of the United States and is and has been living in foster care facilities in the State of Illinois since May, 1969. She is fifteen years old and a ward of the State of Illinois. She does not now live with any other members of her family.

STATUTES AND REGULATIONS CHALLENGED

10a. Illinois law generally provides for payments to foster parents who care for children who are wards of the State. The homes of such foster parents are defined by statutes which state in relevant part:

> "Facility for child care" or "child care facility" means any person, . . . who or which receives or arranges for care of placement of one or more children, *unrelated* to the operator of the facility. Dept. of Children and Family Services. Ill. Rev. Stats., Ch. 23, § 2212.05 (1971)
>
> and
>
> "Foster family home" means a facility for child care in residences of families who receive no more than 8 children *unrelated* to them, ...
>
> Ch. 23, § 2212.17 (emphasis added) (Entire texts set out in Appendix A.)

The statutory scheme does not provide for payments to foster parents caring for minor wards of the State who are related to them.

10b. Regulations of the Illinois Department of Children and Family Services provide for payments to foster parents who care for children unrelated to them who are wards of the State. The regulatory scheme does not provide for foster parents caring for minor wards of the State who are related to them. The policy of non-payment to foster parents caring for children related to them states in relevant part:

> The Department has no statutory authority to pay relatives for care of children. Ill. DCFS Placement Manual, Ch. 3 § 5 at 97 (Entire text set out in Appendix F.)

The regulations however provide that payments may be made to foster parents caring for children related to them at an amount equal to those made to foster parents caring for children unrelated to them, as an exception to policy. (See Appendix F)

DEFENDANTS

11. Defendants, Jerome Miller, is the director of the Department of Children and Family Services. As such, he is the state official responsible for administering the Department of Children and Family Services Act which contains the challenged statutes and authorizes the challenged regulations, and for supervising the day-to-day operation of said Department.

12. Defendant Illinois Department of Children and Family Services acting pursuant to State law, and its Director, Jerome Miller, perform the following functions, inter alia:

a) established rules and regulations concerning . . . foster care;

b) accept for care and placement in foster homes children adjudicated wards of the state;

c) inspect and license foster homes;

d) authorize payment to foster parents caring for children unrelated to them.

Ill. Rev. Stats., 1971, ¶ 23 § 5005(4) (Statutes set out more fully in Appendix B.)

CLASS ACTION

13. The named Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(a), (b)(2) of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated. The members of the class similarly situated are:

(i) all persons who maintain foster children related to them in their home and are refused full foster care payments because of said statutes and regulations.

(ii) all wards of the State (foster children) placed in the homes of foster parents to whom they are related and who are denied payments because of said statutes and regulations.

(iii) all wards of the State (foster children) unable to live with their relatives who cannot afford to accept them as foster children without full State subsidy—the same State subsidy as they receive while placed with non-relatives.

The requirements of Rule 23 are met in that: the class is so numerous that joinder of all members is unpracticable; there are questions of law and fact common to the class; the claims of the representative party are typical of the claims of the class; the representative party will fairly and adequately protect the interests of the class; and the party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate injunctive relief with respect to the class as a whole.

FACTS

14. Plaintiffs Timothy, Mary Lou, Larry and Sherry Robertson, were made wards of the State of Illinois in May, 1969; and categorized by State officials to be foster children.

15. As a result of the classification of the children as foster children, they have been and are now placed in various State approved foster homes and foster care institutions.

16. Each of the State approved homes and foster care institutions receives foster care payments for caring for said children, except that Plaintiffs Youakim do not receive State foster payments.

17. On or about January 7, 1972, the home of Plaintiffs Marcel and Linda Youakim was approved by the Defendants as a proper placement facility and said Plaintiffs, related foster parents, accepted for foster care, Plaintiff Timothy Robertson.

18. In the progress of getting their home licensed as a State-approved foster care facility, Plaintiffs, related foster parents asked a social worker employed by Defendants Miller and the Illinois Department of Children and Family Services at the Defendants' offices at 4320 West Montrose, Chicago, Illinois, whether they would receive regular foster care payments.

19. The social worker at that time told Plaintiffs they would not receive the regular foster care payments because the law and policy denies these payments to related foster parents. Upon consultation with their counsel, Plaintiffs believe the foregoing to be an accurate statement of the Illinois law and policy.

20. Notwithstanding Defendants' refusal to grant the regular foster care payments to Plaintiffs, Defendants tendered, and Plaintiffs on January 7, 1972 entered into, a form "Home Placement Agreement," and accepted Timothy for foster care. A copy of this agreement is attached hereto and made part hereof (Exhibit I). The agreement was signed by all parties.

21. Said Home Placement Agreement is identical to that used by Defendants in approving and subsidizing approved foster homes, except as follows:

(i) The paragraph which provides that foster parents will be subsidized has been crossed out.
(ii) The word "foster" has been crossed out in thirteen places.
(iii) The word "relatives" is inserted in two places. (See Exhibit I).

22. On or about May 20, 1972 Plaintiff, minor ward of the State, Mary Lou Robertson, was similarly accepted for foster care by Plaintiffs Marcel and Linda Youakim, related foster parents.

23. Plaintiff related foster parents are informed and believe that their foster daughter, Plaintiff Mary Lou Robertson, has been removed from several foster homes during the past three years, and further, that Mary Lou is considered to have a "behavior problem" which is the cause of frequent moves.

24. It is Plaintiffs' opinion that Mary Lou does not have a behavior problem when living with them, and that she is happy and well-adjusted in their home.

25. Plaintiff related foster parents are informed and believe that they are providing their foster son Timothy with foster care of a quality equal to or better than the care he has received and would receive from foster parents unrelated to him. The basis for the information and the grounds for this belief are set out in the paragraphs following.

25(a) Plaintiff Timothy has difficulty breathing.

25(b) Prior to Timothy's placement with his present foster parents, Timothy said he had not received regular medical care for his condition.

25(c) Plaintiffs Marcel and Linda Youakim have, at great out-of-pocket expense, arranged for necessary medical care including the removal of Timothy's tonsils and adenoids.

25(d) Timothy's placement with Plaintiffs Youakim as his foster parents is *prima facie* the best placement for him because the guardian, Defendant Miller, has the legal duty to provide foster home placement that is in the best interests of the foster child. Presumably, the present placement is the best one available.

26. Plaintiffs are informed and believe that they are providing their foster daughter, Mary Lou with foster care of a quality equal to or better than the care she has received and would receive from foster parents unrelated to her. The basis for the information and the grounds for this belief are set out in the following paragraphs:

26(a) Mary Lou's teeth are not straight.

26(b) Prior to Mary Lou's placement with her present foster parents, Mary Lou said she had not received any dental or orthodontic care for her condition.

26(c) Plaintiffs Marcel and Linda Youakim have arranged several trips to an orthodontist for necessary dental care.

26(d) Mary Lou's placement with Plaintiffs Youakim as her foster parents is *prima facie* the best placement for her because the guardian, Defendant Miller, has the legal duty to provide foster home placement that is in the best interests of the foster child. Presumably, the present placement is the best one available.

27. Based on the above allegations, Plaintiffs believe it is in the best interests of Timothy and Mary Lou to live with them since, because they are related to their fos-

ter children, they are extraordinarily interested in their welfare, and determined to provide them the best quality care possible.

28. Because of Defendants' refusal to provide regular foster care payments, Plaintiff related foster parents have incurred substantially greater personal expense in caring for the foster children than similarly situated unrelated foster parents who receive the regular payments.

29. The amount of said expense borne by Plaintiff related foster parents has become so great that Plaintiffs are informed and believe and fear that they will be unable to continue providing foster care for the foster children unless Defendants grant payments in the amount equal to that paid to unrelated foster parents.

30. The refusal of Defendants to provide regular foster care payments to Plaintiff related foster parents has precluded Plaintiffs Youakim from even considering accepting for foster care the other family members, Plaintiff Larry Robertson (age 13) and Plaintiff Sherry Robertson (age 15), both wards of the State presently residing in other foster care facilities.

30(a) Sherry is presently placed with unrelated foster parents.

30(b) Larry is presently placed in an orphanage.

31. Plaintiff related foster parents are informed and believe that the best interest of all four children would be served if they could all live together in a family setting. Defendants' refusal to grant Plaintiffs foster care payments makes this impossible.

32. To partially reduce the burden of the cost of caring for the foster children, Plaintiffs Marcel and Linda Youakim have, on the advice of a social worker employed by Defendants, applied for and do now receive some child

support from the Cook County Department of Public Aid. The amount of said welfare payments is about $123.04 per month for two foster children and is substantially less than the amount of regular foster care payments, about $210.00 per month, they would receive but for being relatives.

33. The named Plaintiffs are informed and believe that:

33(a) Other members of the class are unaware of, or unable to procure the partial Public Aid subsidy; and do not now receive it;

33(b) The procedure for procuring a partial welfare subsidy is far more complex, burdensome, time consuming, and uncertain than the simple and regular foster care payment plan normally used by Defendants for unrelated foster homes.

33(c) All applications to, and all receipt of welfare payments from the Cook County Department of Public Aid have a certain stigmatizing effect on the applicant/recipient, and this serves as a further deterrent to and thus discrimination against acceptance of related wards of the State for foster care. Plaintiffs Marcel and Linda Youakim would greatly prefer to receive full foster care payments from the Defendants rather than lesser welfare payments from the Department of Public Aid. Since they must seek and accept welfare payments to continue caring for Timothy and Mary Lou, Plaintiffs feel embarrassed and stigmatized in addition to being damaged by the difference in the amount.

33(d) Any difference in payment is damaging and discriminatory, and deters potentially qualified foster parents from accepting for foster care wards of the State related to them.

34. On information and belief, part or all of the funding for the Illinois Department of Children and Family Services and its foster care subsidy operators originate with the Federal Government (Cf. Social Security Act, Subchapter 4, 42 U.S.C. § 601 et seq. esp. § 625 and generally, Federal Child Welfare and Revenue Sharing Laws).

35. It is the policy of the United States to encourage the care of children in their own homes or the homes of relatives whenever possible. 42 U.S.C. 601. (Complete text set out in Appendix C).

36. Plaintiffs are informed and believe that nothing in the Federal law or regulations concerning foster care payments, bars said payments to related foster parents. 42 U.S.C. 608 (Complete text set out in Appendix E).

37. It is the declared policy of the State of Illinois to administer all its laws in the best interests of the children of the State and to protect and promote the welfare of the children, including the strengthening of their own families wherever possible. Juvenile Court Act, Ill. Rev. Stats., 1971 Ch. 37 § 701 et seq; Department of Children and Family Services Act, Ill. Rev. Stats. 1971, Ch. 23 § 5001 et seq., esp. § 5005 (Appendices D and B).

38. Defendants' denial of the foster care payments to related foster parents conflict with the policy of the United States and the State of Illinois set out in paragraphs 32 through 34 above.

FIRST CAUSE OF ACTION

39. Plaintiffs reallege and incorporate by reference paragraphs 1 through 38 above.

40. Defendants, relying upon the statutes and regulations set out in paragraphs 10(a) and 10(b), *supra,* refuse

to grant foster care payments to all persons, including Plaintiffs, who meet all State standards for foster homes, but who accept for foster care, or might accept for foster care, children—wards of the State—who are related to them.

41. Defendants, by granting foster care payments to qualified unrelated foster parents, and by refusing to grant such payments to qualified related foster parents, violate Plaintiff related foster parents' right to equal protection as guaranteed by the United States Constitution.

42. By acting as described, *supra,* Defendants create an invidious, arbitrary and capricious classification for which there is no rational basis and which serves no compelling State interest.

43. Defendant by refusing to grant foster care payments are causing immediate, irreparable, permanent and increasing injury to Plaintiff related foster parents for which there is no adequate remedy at law.

44. The challenged statutes and regulations are not saved by the stopgap provision of partial welfare payments from the Department of Public Aid for the reasons set out in paragraphs 33 and 34, *supra.*

SECOND CAUSE OF ACTION

45. Plaintiffs reallege and incorporate by reference paragraphs 1 through 38 above.

46. Defendants' action of granting foster care payments to qualified unrelated foster parents, and by refusing to grant such payments to qualified related foster parents, violates Plaintiff related foster children's right to equal protection as guaranteed by the United States Constitution.

47. By acting as described, *supra,* Defendants create an invidious, arbitrary and capricious classification for which there is no rational basis and which serves no compelling State interest.

48. Defendants by refusing to grant foster care payments are causing immediate, irreparable, permanent and increasing injury to Plaintiff related foster children for which there is no adequate remedy at law.

49. The challenged statutes and regulations are not saved by the stopgap provision of partial welfare payments from the Department of Public Aid for the reasons set out in paragraphs 33 and 34, *supra.*

THIRD CAUSE OF ACTION

50. Plaintiffs reallege and incorporate by reference paragraphs 1 through 38 above.

51. Defendants' action of granting foster care payments to qualified unrelated foster parents, and by refusing to grant such payments to qualified related foster parents, denies Plaintiff related foster children's right to equal protection by economically discriminating against those members of the class of Plaintiffs' children who could live with otherwise qualified and willing relatives but for the lack of State foster care payments. Foster children whose qualified relatives can afford to care for them without State payment, continue to receive the benefits of close family associations. Such discrimination based on wealth violates the Constitution of the United States, and the policy favoring placement with relatives wherever possible.

52. By acting as described, *supra,* Defendants create an invidious, arbitrary and capricious classification for which there is no rational basis and serves no compelling State interest.

53. Defendants by refusing to grant foster care payments are causing immediate, irreparable, permanent and increasing injury to Plaintiff related foster children for which there is no adequate remedy at law.

54. The challenged statutes and regulations are not saved by the stopgap provision of partial welfare payments from the Department of Public Aid for the reasons set out in paragraphs 33 and 34, *supra.*

PRAYER FOR RELIEF

55. Wherefore, Plaintiffs, on behalf of themselves and all others similarly situated respectfully pray:

55(a) That this Court assume jurisdiction of this cause and receive Plaintiffs' application for a Three-Judge District Court pursuant to 28 U.S.C. Secs. 2281, 2284;

55(b) That this Court immediately notify the Chief Judge of this Circuit of the application to convene a Three-Judge District Court pursuant to 28 U.S.C. Secs. 2281, 2284;

55(c) That a Three-Judge District Court be convened to hear and adjudicate all questions in the cause;

55(d) That the Three-Judge District Court determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action;

55(e) That the Three-Judge District Court enter a final judgment permanently enjoining the State Director of the Illinois Department of Children and Family Services, and his successors, employees, or agents, and all other persons in active concert and participation, from enforcing, applying, or executing Ill. Revised Statutes, Ch. 23, § 2212.05 and § 2212.17 and Illinois Department of Children

and Family Services Family Placement Manual, Ch. 5 § 3 at 95 through 97 as written because said statutes and regulations violate equal protection of the law as guaranteed by Plaintiffs by the Fourteenth Amendment to the Constitution of the United States.

55(f) That the Three-Judge District Court order such other relief as may be deemed just, including the costs of this action, and reasonable attorneys fees.

Respectfully submitted,

MARCEL YOUAKIM
LINDA YOUAKIM
MARY LOU ROBERTSON (a minor)
TIMOTHY ROBERTSON (a minor)
LARRY ROBERTSON (a minor)
SHERRY ROBERTSON (a minor)

/s/ Patrick A. Keenan
Attorney for Plaintiffs

Of Counsel: Bogdan Martinovich '74
De Paul University College
of Law

[Affidavit of Verification Omitted]

EXHIBIT I

State of Illinois

DEPARTMENT OF CHILDREN AND FAMILY SERVICES
Division of Child Welfare

RELATIVE HOME PLACEMENT AGREEMENT

Date of Placement 1/7/72

The Division of Child Welfare, Department of Children and Family Services, has approved the home of Mr. and Mrs. Marcel Youakim, address 1720 Mannheim Rd., Des Plaines, Ill., for the care of a foster child: Name: Timothy Robertson, Born 5/1/65.

* * *

The district worker will visit the above home in order to:

Know the child and keep informed regarding his adjustment.

Assist the * * * family and the child in problems that may arise.

Discuss information regarding the child's family and background in order to assist the * * * family in understanding and helping the child.

Plan for meeting the clothing, medical care, and other needs of the child.

Discuss any changes in planning for the child.

The Department has the right and authority to remove the child when it appears that this is in his best interests, and agrees to give at least two weeks notice prior to removal if at all possible. However, in those instances in which the Department receives substantiated evidence that the child is receiving improper care or treatment, the Department will remove the child immediately pending investigation. The * * * parents agree to cooperate with the Department and to:

Share with the worker their experiences with the child.

Comply with requirements for regular medical and dental examinations.

Report to the worker any illness of the child and any need for medical care.

Call a physician immediately and notify the district office as soon as possible in case of acute illness or accident.

Discuss any change in plans for the child with the worker.

Plan clothing and other needs with the worker.

Consult the worker regarding any extended trip being planned for the child. When the trip is out-of-state, consent from the district office is necessary.

Cooperate with the worker regarding visits between the child and his family either in the * * * home, office, or elsewhere; treat the parents courteously, and refrain from criticizing them in the child's presence.

Plan with the worker before making religious commitments for the child, such as baptism, confirmation, and church membership.

Keep confidential all information regarding the child and his family.

Make no arrangements for boarding other children without approval of the worker.

Report any changes in the * * * family's situation, or circumstances, which may affect the welfare of the child or the * * * family's ability to continue giving care. Give the worker at least two weeks notice, in any situation, when requesting that the child be removed. More than two weeks is often needed to complete planning for the child.

It is understood by both the worker and the * * * parents that the child is not placed for adoption in this * * * home, and that the child may be removed by the Department when it appears to be for the child's best interests.

This placement agreement, made in good faith and mutual confidence, is equally binding on the Department and the * * * ABOVE NAMED RELATIVES.

(District office stamp)

/s/ Marcel Youakim, 1/7/72
* * * M. Youakim
brother-in-law

/s/ Linda Youakim, 1/7/72
Sister—Linda Youakim

/s/ Christine Mendoza

(Department Representative) 1/7/72

EXHIBIT A TO COMPLAINT

Chapter 23 Illinois Revised Statutes

2212.05 Facility for child care, defined.] § 2.05. "Facility for child care" or "child care facility" means any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in this Act, established and maintained for the care of children.

2212.17 Foster family home and types of homes, defined.] § 2.17. "Foster family home" means a facility for child care in residences of families who receive no more than 8 children unrelated to them, unless all the children are of common parentage, for the purpose of providing family care and training for the children on a full-time basis. The family's own children, under 18 years of age, shall be included in determining the maximum number of children served. The term "foster family home" includes homes receiving children from any State-operated institution for child care; or from any agency established by a municipality or other political subdivision of the State of Illinois authorized to provide care for children outside their own homes. The types of foster family homes are defined as follows:

(a) "Boarding home" means a foster family home which receives payment for regular full-time care of a child or children.

(b) "Free home" means a foster family home other than an adoptive home which does not receive payments for the care of a child or children.

(c) "Adoptive home" means a foster family home which receives a child or children for the purpose of adopting the child or children.

(d) "Work-wage home" means a foster family home which receives a child or children who pay part or all of their board by rendering some services to the family not prohibited by the Child Labor Law[1] or by standards or regulations of the Department prescribed under this Act. The child or children may receive a wage in connection with the services rendered the foster family.

(e) "Agency-supervised home" means a foster family home under the direct and regular supervision of a licensed child welfare agency, of the Department of Children and Family Services, of a circuit court, or of any other State agency which has authority to place children in child care facilities, and which receives no more than 8 children, unless of common parentage, who are placed and are regularly supervised by one of the specified agencies.

(f) "Independent home" means a foster family home, other than an adoptive home, which receives no more than 4 children, unless of common parentage, directly from parents, or other legally responsible persons, by independent arrangement and which is not subject to direct and regular supervision of a specified agency except as such supervision pertains to licensing by the Department.

EXHIBIT B TO COMPLAINT

Chapter 23 Illinois Revised Statutes § 5001. Purpose

The purpose of this Act is to create a Department of Children and Family Services to provide social services to children and their families, to operate children's insti-

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1. Chapter 48, § 31.1 et seq.

tutions, and to provide certain other rehabilitative and residential services as enumerated in this Act. 1963, June 4, Laws 1963, p. 1061, § 1.

5005. Direct child welfare services.] § 5. To provide direct child welfare services when not available through other public or private child care or program facilities.

For purposes of this Section:

The term "children" means persons found within the State who are under the age of 18 years at the time of acceptance for service or care. The term also includes children under age 18 and children age 18 or more, but under age 21 who (1) are in foster care under order of a court and (2) were, at any time before August 1, 1969, recipients of foster care under Sections 6-4 or 12-8.6 of "The Illinois Public Aid Code", approved April 11, 1967, as amended.[1]

The term "child welfare services" means public social services which implement or substitute for parental care and supervision for the purpose of: (1) preventing or remedying or assisting in the solution of problems which may result in the neglect, abuse or exploitation of children; (2) protecting and caring for homeless, dependent or neglected children; (3) protecting and promoting the welfare of children, including the strengthening of their own families and counseling of family members; (4) providing adequate care of children away from their homes, where needed, in foster family homes or day care or other child care facilities; or (5) providing counseling for mentally retarded, physically, and socially handicapped children and their parents when not otherwise available.

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1. Chapter 23, §§ 6-4, 12-18.6.

The Department shall establish and maintain tax-supported child welfare services and extend and seek to improve voluntary services through the State, to the end that services and care shall be available on an equal basis throughout the State to children requiring such services.

For the purpose of insuring effective state-wide planning, development, and utilization of resources for the day care of children, operated under various auspices, the Department is hereby designated to coordinate all day care activities for children of the State and shall:

(1) Develop a comprehensive day-care plan for the State which identifies high-priority areas and groups, relating them to available resources, and identifying the most effective approaches to the use of existing day care services. The plan shall include methods and procedures for the development of additional day care resources for children to meet the goal of reducing short-run and long-run dependency and to provide necessary enrichment and stimulation to the education of young children. Recommendation shall be made for State policy on optimum use of private and public, local, state and federal resources. A written plan shall be submitted to the Governor, annually, on January 1, and shall include an evaluation of developments over the preceding year, including cost-benefit analyses of various arrangements.

(2) The Department shall conduct day care planning activities within the following priorities:

(a) development of voluntary day care resources wherever possible, with the provision for grants-in-aid only where demonstrated to be useful and necessary as incentives or supports;

(b) emphasis on service to children of recipients of public assistance where such service will allow training or employment of the parent toward achieving the goal of independence;

(c) Maximum employment of recipients of public assistance in day care centers and day care homes, operated in conjunction with short-term work training programs;

(d) care of children from families in stress and crisis whose members potentially may become, or are in danger of becoming, non-productive and dependent;

(e) expansion of family day care facilities wherever possible;

(f) location of centers in economically depressed neighborhoods, preferably in multi-service centers with cooperation of other agencies;

(g) use of existing facilities free of charge or for reasonable rental wherever possible in lieu of construction.

(3) Based on its planning activities, the Department shall actively stimulate the development of public and private resources at the local level. It shall also seek the fullest utilization of federal funds directly or indirectly available to the Department.

(4) Where appropriate, existing non-governmental agencies or associations shall be involved in planning by the Department.

The Department shall establish rules and regulations concerning its operation of programs established to meet these purposes, including but not limited to adoption, foster care, family counseling, protective services, service to unwed mothers, homemaker service, return of runaway children, and interstate services.

The Department may provide financial assistance, and shall establish rules and regulations concerning such assistance, to persons who adopt physically or mentally handicapped, older and other hard-to-place children who immediately prior to their adoption were legal wards of

the Department. The amount of assistance may vary, depending upon the needs of the child and the adoptive parents, but must be less than the monthly cost of care of the child in a foster home. Special purpose grants are allowed where the child requires special service but such costs may not exceed the amounts which similar services would cost the Department if it were to provide or secure them as guardian of the child.

The Department shall accept for care and training any child who has been adjudicated neglected or dependent committed to it pursuant to the "Juvenile Court Act".[2] The Department may, at its discretion except for those children also adjudicated neglected or dependent, accept for care and training any child who has been adjudicated delinquent or as a minor in need of supervision, under the "Juvenile Court Act", but no such child shall be committed to the Department by any court without the approval of the Department.

The Department may assume temporary custody of any child (1) if it has received a written consent to such temporary custody signed by the parents of the child or by the parent having custody of the child if the parents are not living together or by the guardian or custodian of the child if the child is not in the custody of either parent or (2) if the child is found in the State and neither a parent, guardian nor custodian of the child can be located. The Department shall have the authority, responsibilities and duties that a legal custodian of the child would have pursuant to Section 1-12 of the "Juvenile Court Act".[3] A

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2. Chapter 37, § 701-1 et seq.
3. Chapter 37, § 701-12.

parent, guardian or custodian of a child in the temporary custody of the Department who would have custody of the child if he were not in the temporary custody of the Department may deliver to the Department a signed request that the Department surrender the temporary custody of the child. The Department may retain temporary custody of the child for 10 days after the receipt of the request, during which period the Department may cause to be filed a petition pursuant to the "Juvenile Court Act". If a petition is so filed, the Department shall retain temporary custody of the child until the court orders otherwise. If a petition is not filed within the 10 day period, the child shall be surrendered to the custody of the requesting parent, guardian or custodian not later than the expiration of the 10 day period, at which time the authority and duties of the Department with respect to the temporary custody of the child shall terminate. The Department may place children under 18 years of age in licensed child care facilities when in the opinion of the Department, such placement would be for their best interest. Payment for board, clothing, care, training and supervision of any child placed in a licensed child care facility may be made by the Department, by the parents or guardians of the estates of those children, or by both the Department and the parents or guardians, except that no payments shall be made by the Department for any child placed in a licensed child care facility for board, clothing, care, training and supervision of such a child that exceed the average percapita cost of maintaining and of caring for a child in institutions for dependent or neglected children operated by the Department. However, such restriction on payments does not apply in cases where children require specialized care and treatment for problems of severe emotional disturbance, physical disability, social adjustment, or any combination thereof and suitable facilities for the placement of such children are not available at payment rates within the limitations set forth in this Section.

The Department may receive and shall use, in its entirety, for the benefit of children any gift, donation or bequest of money or other property which is received on behalf of such children, or any financial benefits to which such children are or may become entitled while under the jurisdiction or care of the Department.
Amended by P.A. 76-2041, § 1, eff. July 1, 1970; P.A. 77-1374, § 1, eff. Aug. 31, 1971.

APPENDIX C TO COMPLAINT

Title 42 United States Code
§ 601. Appropriations

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

Aug. 14, 1935, c. 531, Title IV, § 401, 49 Stat. 627; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 312(a), 70 Stat. 848; July 25, 1962, Pub. L. 87-543, Title I, § 104(a)(4), (c)(2), 76 Stat. 185, 186; Jan. 2, 1968, Pub. L. 90-248, Title II, § 241(b)(1), 81 Stat. 916.

§ 625. "Child-welfare services" defined

For purposes of this subchapter, the term "child-welfare services" means public social services which supplement, or substitute for, parental care and supervision for the purpose of (1) preventing or remedying, or assisting in the solution of problems which may result, in the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of children of working mothers, and (4) otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or where needed, the provision of adequate care of children away from their homes in foster family homes or day-care or other child-care facilities.

Aug. 14, 1935, c. 531, Title IV, § 425, as added Jan. 2, 1968, Pub. L. 90-248, Title II, § 240(c), 81 Stat. 914.

APPENDIX D TO COMPLAINT

Chapter 37 Illinois Revised Statutes

§ 701-2. Purpose and Policy

(1) The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his own home, as will serve the moral, emotional, mental and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family

ties whenever possible, removing him from the custody of his parents only when his welfare or safety or the protecthe public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should be given by his parents, and in cases where it should and can properly be done to place the minor in a family home so that he may become a member of the family by legal adoption or otherwise.

(2) In all proceedings under this Act the court may direct the course thereof so as promptly to ascertain the jurisdictional facts and fully to gather information bearing upon the current condition and future welfare of persons subject to this Act. This Act shall be administered in a spirit of humane concern, not only for the rights of the parties, but also for the fears and the limits of understanding of all who appear before the court.

(3) This Act shall be liberally construed to carry out the foregoing purpose and policy.

Laws 1965, p. 2585, § 1-2, eff. Jan. 1, 1966.

APPENDIX E TO COMPLAINT

Title 42 United States Code

42 § 608 PUBLIC HEALTH AND WELFARE

§ 608. Payment to States for foster home care of dependent children; definitions

Effective for the period beginning May 1, 1961—

(a) the term "dependent child" shall, notwithstanding section 606(a) of this title, also include a child (1) who would meet the requirements of such section 606(a) or of section 607 of this title except

for his removal after April 30, 1961, from the home of a relative (specified in such section 606(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child, (2) whose placement and care are the responsibility of (A) the State or local agency administering the State plan approved under section 602 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made an agreement which is still in effect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph (f)(1) and such other provisions as may be necessary to assure accomplishment of the objectives of the State plan approved under section 602 of this title, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who (A) received aid under such State plan in or for the months in which court proceedings leading to such determination were initiated, or (B) (i) would have received such aid in or for such month if application had been made therefor, or (ii) in the case of a child who had been living with a relative specified in section 606(a) of this title within 6 months prior to the month in which such proceedings were initiated, would have received such aid in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made therefor:

(b) the term "aid to families with dependent children" shall, notwithstanding section 606(b) of this title, include also foster care in behalf of a child described in paragraph (a) of this section—

(1) in the foster family home of any individual, whether the payment therefor is made to such individual or to a public or nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payment therefor is made to such institution or to a public or non-profit private child-placement or child-care agency, but subject to limitations prescribed by the Secretary with a view to including as "aid to families with dependent children" in the case of such foster care in such institutions only those items which are included in such term in the case of foster care in the foster family home of an individual.

(c) the number of individuals counted under clause (A) of section 603(a)(1) of this title for any month shall include individuals (not otherwise included under such clause) with respect to whom expenditures were made in such month as aid to families with dependent children in the form of foster care; and

(d) services described in paragraph (f)(2) of this section shall be considered as part of the administration of the State plan for purposes of section 603(a)(3) of this title;

but only with respect to a State whose State plan approved under section 602 of this title—

(e) includes aid for any child described in paragraph (a) of this section, and

(f) includes provision for (1) development of a plan for each such child (including periodic review of the necessity for the child's being in a foster family home or child-care institution) to assure that he receives proper care and that services are provided which are designed to improve the conditions in the home from which he was removed or to otherwise make possible his being placed in the home of a relative specified in section 606(a) of this title, and (2) use by the State or local agency administering the State plan, to the maximum extent practicable, in placing such a child in a foster family home or child-care institu-

tion, of the services of employees, of the State public-welfare agency referred to in section 722(a) of this title (relating to allotments to States for child welfare services under sections 721-728 of this title) or of any local agency participating in the administration of the plan referred to in such section, who perform functions in the administration of such plan.

For purposes of this section, the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing homes of this type, as meeting the standards established for such licensing; and the term "child-care institution" means a nonprofit private child-care institution which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing. Aug. 14, 1935, c. 531, Title IV, § 408, as added May 8, 1961 Pub.L. 87-31, § 2, 75 Stat. 76, and amended July 25, 1962, Pub.L. 87-543, Title I, §§ 101(b)(2)(D), 104(a)(3)(F), (G), 131(b), 135(a)-(d), 155(a), 76 Stat. 180, 185, 193, 196, 197, 207; Jan. 2, 1968, Pub.L. 90-248, Title II, §§ 201(e)(4), 205(c), 81 Stat. 880, 892.

APPENDIX F TO COMPLAINT

ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Social Services—PLACEMENT MANUAL July 17, 1972
Chapter Three

SPECIAL CHILD CARE PROGRAMS

Part Five: PLACEMENT WITH RELATIVES

I. DEFINITION

"Relative" means a person having any of the following relationships to the child by blood, marriage, or adoption: grandparents, brother, sister, stepbrother, stepsister, uncle or aunt. By administrative interpretation the definition has been broadened to include great-uncle, great-aunt and great-grandparent. Such "related" persons are not subject to foster home licensing whereas all other "relative" homes are subject to study and licensing as a foster family home.

II. LEGAL BASE

The Act Creating the Department of Children and Family services authorizes provision of child welfare services which supplement or substitute parental care. Provision of such services does not preclude placement of a child under care with approved relatives.

III. SCOPE OF SERVICE

The primary consideration in placement of a child with relatives are the needs of the child. Such placement, if indicated, is designed to reinforce the child's identification with "family."

IV. CRITERIA

If a relative home is to be considered as a placement resource the home must reasonably meet the minimum standards cited in Chapter Two, Section IV. Relative resources should be explored for all children for whom placement is indicated with the exception of children relinquished for adoption.

V. INTAKE

A. Request for Service

(1) The district office should check with the Illinois Department of Public Aid as a potential financial resource for the child(ren) living with relatives at the time of referral or for whom relatives are interested in accepting for care.

(2) Form CFS-602, *Medical Report on An Adult or Child in a Licensed Child Care Facility,* must be completed for all members of the household if a relative home is being considered as a placement resource.

B. Evaluation

Interest and concern of relatives in the child(ren); the feeling of relatives toward parents; ability to cooperate with the Department; and, placement of choice of the parents and child(ren) must all be explored as essential elements for a successful placement.

C. Disposition

In all relative placements the district office should approach the court seeking a court order appointing the Guardianship Administrator or

the approved relative as guardian of the person of the child(ren) to insure the availability of a person to make decisions in behalf of the child(ren) and to prevent removal of the child(ren) by unauthorized persons.

VI. PROCEDURES FOLLOWING CASE ACCEPTANCE

A. The District Office will:

(1) Arrange for placement and authorize payment, if indicated and approved by Social Service Administrator, Metropolitan or Downstate Area.

(2) Supervise placement and provide casework services to the family or relatives on behalf of the child(ren).

B. The Relative will:

(1) Accept terms of placement such as duration and agency goals for the child(ren) and work cooperatively with the agency to achieve these goals.

(2) Respect the parents desires for religious training for the child(ren).

SPECIAL CHILD CARE PROGRAMS

I. PLACEMENT WITH RELATIVES

A. The Department has no statutory authority to pay relatives for the care of children. Only the Social Service Administrator of Metropolitan or

Downstate Area may authorize such payment and it will not be authorized without written approval. A request for payment of a relative shall include: summary of the child's situation; legal status; reason for considering the proposed placement as desirable for the child; financial circumstances of the relatives; and, monthly rate for which approval is requested.

B. If payment is to be made it shall be an *inclusive* rate which *does not exceed* the regular *rates* paid to *Division of Child Welfare foster family homes.*

C. Monthly payment to relatives is authorized by directing completed Form CFS-903, *Payment Authorization,* to the Division of Methods and Information Services, State Administrative Office, Springfield, 62706. Indicate in Section 4, Type of Payment #34 Relative—"legally exempt from licensing." Monthly amount to be entered in Section 5 Payments—Board. (See Chapter Two, Appendix 1, IIA—Monthly Payment Rate.)

D. Initial placement clothing may be authorized by use of Forms CFS-932, *Purchase Authorization,* and FA-13, *Invoice-Voucher.* The vendor(s) should direct the completed forms to the Division of Administrative Services, State Administrative Office, Springfield, 62706, for payment. (See Chapter Two, Appendix 1, II B—Initial Clothing Allowance.)

E. Form CFS-425, *Foster Home Placement Agreement,* is to be signed in duplicate by the relative payee and the district worker with changes to indicate the relationship of the caretaker(s) to the child. One copy is kept by the relative and the other filed in the child's record.

DEFENDANTS' MOTION TO STRIKE AND DISMISS COMPLAINT, TO STAND AS TO SECOND AMENDED COMPLAINT

Filed April 2, 1973

[Caption Omitted in Printing]

NOW COME Defendants JEROME MILLER, individually and as Director of the Illinois Department of Children and Family Services, and the DEPARTMENT OF CHILDREN AND FAMILY SERVICES, by their attorney WILLIAM J. SCOTT, Attorney General of the State of Illinois, and pursuant to Rule 12 of Federal Rules of Civil Procedure respectfully move this Court to strike and dismiss the Plaintiffs' Complaint. In support of this Motion, the Defendants herein state as follows:

1. The allegations contained in Plaintiffs' Complaint, which purport to set forth a violation of equal protection, specifically Ill. Rev. Stat. Chapter 23, Sections 2212.05 and 2212.17, are conclusory in nature and fail to state a cause of action or state a claim upon which relief may be granted.

A. Said statute as it stands is a valid legislative classification permissible under state and federal law and does not constitute arbitrary, capricious or invidious discrimination in violation of U.S.C. Constitutional Amendment 14.

2. This Court does not have jurisdiction over the subject matter as to these defendants.

A. Plaintiffs by bringing suit against the Department of Children and Family Services is in effect bringing suit against the State.

B. The State of Illinois has not consented to be sued by Plaintiffs in Federal Court and as such cannot be made subject of such suit by virtue of its grant of immunity by U.S.C. Constitutional Amendment II.

C. In the event this Court should determine that its jurisdiction does in fact attach hereto, it should abstain from exercising such jurisdiction by virtue of there being an effective remedy existing at the level of the State Courts.

3. The class action commenced herein is improperly brought and fails to meet the requirement demanded of such action in that:

A. The claims of Plaintiffs are not representative of the class as a whole.

B. The Plaintiffs as representative cannot adequately protect the interests of the class.

C. There is doubt as to whether there exists a common question of law or fact applicable to the entire class.

Respectfully submitted,

.....
WILLIAM J. SCOTT
Attorney General of Illinois

RICHARD L. RYAN
Special Ass't Atty General
(Of Counsel)

[Notice of Filing and Certificate of Service Omitted]

SUPREME COURT OF THE UNITED STATES

No. 73-6935

MARCEL YOUAKIM, ET AL., APPELLANTS

v.

JEROME MILLER, Individually and as Director of the Department of Children and Family Services, ET AL.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis,*

IT IS ORDERED by this Court that the said motion be, and the same is hereby granted.

March 17, 1975

Mr. Justice Douglas took no part in the consideration or decision of this motion.

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND FOR SUMMARY JUDGMENT

Filed June 10, 1976

[Caption Omitted in Printing]

1. Now come the named Plaintiffs, by their attorney, PATRICK A. KEENAN, DePaul Law Clinic, and respectfully move that this Honorable Court enter a Preliminary Injunction pursuant to FRCP 65(a) or in the alternative, Summary Judgment, pursuant to FRCP 56 against the Defendants to prevent them from continuing in their refusal to pay full federally subsided (sic) foster care (AFDC-FC) payments to the members of the Plaintiff class.

2. The grounds for this Motion are that the Illinois practice of refusing the payments is in conflict with the Social Security Act and the applicable H.E.W. Program Instruction and with the Supremacy Clause of the U.S. Constitution.

3. This cause comes to be heard on remand from the U.S. Supreme Court which by its *per curiam* opinion herein which vacated the dismissal of the Complaint by the Three-Judge District Court, and requires this Court to consider first the statutory issue set out in paragraph 2. See *Youakim* v. *Miller,* 96 S. Ct. 1399 at 1402, 1976. (Copy attached as Exhibit A, 5 pages.)

4. The Social Security Act allows and requires the State to pay full AFDC-FC payments to children who are wards of the Juvenile Court who are placed in a licensed or approved foster family home of *any individual.* 42 U.S.C. § 608(b)(1). (emphasis added. Test (sic) of § 608 attached as Exhibit B, and set out at p. 31 of the Appendix filed in the Supreme Court.) There are no exclusions.

5. On October 25, 1974, the H.E.W. Social and Rehabilitation Service issued Program instruction APA-PI-75-9 which states in relevant part:

> When a child has been removed from his home by judicial determination and is placed in foster care under the various conditions specified in Section 408 of the Social Security Act and 45 CFR 233.110, the foster care rate of payment prevails regardless of whether or not the foster home is operated by a relative. A non-legally liable relative has no financial responsibility towards the child placed with him and the income and resources of such a relative are not factors in determining entitlement to a foster care payment.

(Program Instruction attached as Exhibit C and set out at pp. 27-29 of Plaintiffs' Brief filed in the Supreme Court.)

6. In response to the Supreme Court's invitation of October 15, 1974, that the Solicitor General filed an *amicus* brief, Solicitor Robert Bork stated as follows in his February 19, 1975, brief filed on behalf of H.E.W. in the Supreme Court:

> We submit that the Illinois policy of denying foster care AFDC benefits for children living with relatives is invalid because it conflicts with specific criteria for eligibility set forth in the Social Security Act . . .
> Amicus Memorandum 2

(attached as Exhibit D, 7 pages.)

7. Notwithstanding the clarity of the federal law, the Defendants persist in their refusal to comply therewith. On June 1, 1976, Illinois Assistant Attorney General Richard Regan (sic) told this Honorable Court, Judge Alfred Y. Kirkland presiding, that the Defendants refuse to comply with "H.E.W.'s position."

8. By their own affidavit filed herein on January 8, 1974, Defendants admitted that 1,500 DCFS wards are

placed in foster care in the homes of their relatives, but only approximately 140 are receiving the full amount of AFDC-FC benefits. In 1974, approximately 1,360 eligible DCFS wards did not receive the required benefits. (Affidavit of Ralph Hanibult attached as Exhibit E, set out in Appendix at 44.)

9. This cause has been pending since the original complaint was filed on March 13, 1973. During three years of litigation the members of the Plaintiff class have been denied the federally subsidized AFDC-FC payments to which they have a federal legal and constitutional right.

10. There are no contested issues of fact.

11. This Motion is supported by the Affidavits of Patrick A. Keenan and Jane Shay Lynch, attached hereto as Exhibit F. The Plaintiffs also refer to, and ask that their Second Amended Complaint filed January 21, 1974, be incorporated in these motions.

12. In addition to the authorities cited in the Plaintiffs-Appellants' Brief filed herewith, Plaintiffs respectfully ask that this Court consider the Seventh Circuit Court's recent Opinion in *Mandley* v. *Trainor,* 523 F. 2d 415 (1975) that Illinois may not declare ineligible persons who come within the federal definition of eligibility for categorical assistance. at 423.

13. WHEREFORE, for the reasons collectively assigned above, and to give effect to the federal law, the Plaintiffs respectfully pray that this Court enter a Preliminary Injunction against the Defendants, or in the alternative, enter a Summary Judgment for the Plaintiffs and against the Defendants to include the following relief:

13a. Enjoin the Defendants from execution of the state statutes or policies which deny full foster care (AFDC-FC) payments to Plaintiffs related foster children;

13b. In the alternative, declare, that the Statute which prevents licensure of foster homes operated by persons related to this foster children (Ill. Rev. Stat. Ch. 23, §§ 2212.05 and 2212.17, 1975) is in conflict with the federal Social Security Act and Regulations and can have no further effect. (statutes attached as Exhibit G, and set out at pp. 21-22 of Appendix.)

13c. In the alternative, strike the word "unrelated" from the foster home-licensure statutes. (Ill. Rev. Stat. Ch. 23, §§ 2212.05 and 2212.17 (1975));

13d. Order the defendants to enact and execute policies and procedures, to be first submitted to and approved by this Court, which will provide for full foster (AFDC-FC) payments to all Illinois children who are in foster care and who meet the eligibility criteria of 42 U.S.C. § 608, including those children who are related to their foster parents.

13e. For such other relief as may be deemed just, including appropriate costs and attorney's fees.

13f. In the event this Motion and relief is denied, to retain jurisdiction of this cause, and to consider the Plaintiffs' constitutional claims.

Respectfully submitted,

.....

/s/Patrick A. Keenan
PATRICK A. KEENAN
Attorney for Plaintiff.

PATRICK A. KEENAN
Attorney for Plaintiffs
DePaul Law Clinic
23 East Jackson Blvd.
Room 950
Chicago, Illinois 60604

EXHIBIT C TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND FOR SUMMARY JUDGMENT

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

PROGRAM INSTRUCTION
APA-PI-75-9
October 25, 1974

TO: STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS

SUBJECT: AFDC Foster Care

COMMENT: This program instruction is issued to resolve the problem of some States not licensing or approving the homes of non-legally liable relatives as foster care homes even though suitable foster care could be provided in the homes and payments made at the foster care rate when children are placed with relatives who meet all conditions of eligibility for AFDC-FC.

There have been several U.S. District Court decisions which have held that States may not refuse to provide the foster care rate to a foster home because it is operated by relatives who have no legal responsibility for support and care of the child.

In addition, the U.S. Supreme Court in the case of *Ramos* v. *Montgomery,* January 18, 1971, upheld making a higher payment for foster care than was provided under a state's standard for AFDC payments.

Under 45 CFR 233.110(a)(1), states must provide for aid in the form of foster care for each otherwise eligible child as specified in the Act and in 233.110(b). Federal financial participation is available for children who are placed in a foster home or non-profit private child-care institutions licensed or approved by the agency which is responsible for licensing or approval of such facilities in the State. These provisions apply regardless of whether the licensed or approved foster family home in which a child is placed is operated by a relative (with no legal responsibility to support the child). When a child has been removed from his home by judicial determination and is placed in foster care under the various conditions specified in Section 408 of the Social Security Act and 45 CFR 233.110, the foster care rate of payment prevails regardless of whether or not the foster home is operated by a relative. A non-legally liable relative has no financial responsibility towards the child placed with him and the income and resources of such a relative are not factors in determining entitlement to a foster care payment. It must be noted, too, that the 1967 amendments to the Social

Security Act liberalized Federal financial participation in the cost of foster care, recognizing foster family care is more costly than care in the child's own home.

INQUIRIES TO:

SRS Regional Commissioners
/s/John A. Svahn
JOHN A. SVAHN
Commissioner
Assistance Payments Administration

EXHIBIT D TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND FOR SUMMARY JUDGMENT

MEMORANDUM FOR THE UNITED STATES AS *AMICUS CURIAE*

Filed February, 1975

[Caption Omitted in Printing]

This memorandum is submitted in response to this Court's order of October 15, 1974, inviting the Solicitor General to present the views of the United States.

STATEMENT

The State of Illinois has a policy whereby it makes a substantial foster care (AFDC-FC) payment pursuant to the federal Aid to Families with Dependent Children (AFDC) program when children are placed in a foster home with persons who are not related, pursuant to a judicial determination that the children's original home is unsuitable for them. If, however, the persons providing the foster care in such circumstances are related to the children, Illinois denies them foster care payments, unless they can show a need therefor. The foster family may qualify for AFDC payments, which in Illinois are less than the AFDC-FC payments.

Appellants in this case are foster parents caring for children related to them, and the children themselves. They brought a class suit in the United States District Court for the Northern District of Illinois, contending that the Illinois practice of providing higher payments when the foster parents are unrelated to the children violates the Social Security Act and the Equal Protection Clause. A three-judge district court rejected these contentions and dismissed the suit (J.S. App. A).

ARGUMENT

We submit that the Illinois policy of denying foster care AFDC benefits for children living with relatives is invalid because it conflicts with specific criteria for eligibility set forth in the Social Security Act; and that the validity of this practice is a substantial question in the administration of the Social Security Act which warrants plenary review by this Court.

1. In order to qualify for AFDC benefits, a child must be a "dependent child" as defined in 42 U.S.C. 606(a). Under that definition, a child is dependent if it (1) has been deprived of parental support for specified reasons, (2) is living with a relative as defined in the section, and (3) is under 18 (or, in certain circumstances 21) years of age.[1] The AFDC foster care program is provided under 42 U.S.C. 608, which extended the definition of 'dependent

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1. 42 U.S.C. 606(a) provides:

When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or neice, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocation or technical training designed to fit him for gainful employment.

child' to include certain children who, even though not living with relatives, live in foster homes as a result of a judicial determination that they should be removed from their regular homes.[2] A child is eligible for AFDC-FC if it

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2. 42 U.S.C. 608 (a) provides:

Effective for the period beginning May 1, 1961—

(a) the term "dependent child" shall, notwithstanding section 606(a) of this title, also include a child (1) who would meet the requirements of such section 606(a) or of section 607 of this title except for his removal after April 30, 1961, from the home of a relative (specified in such section 606(a)) as a result of a judicial determination to the affect that continuation therein would be contrary to the welfare of such child, (2) whose placement and care are the responsibility of (A) the State or local agency administering the State plan approved under section 602 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made an agreement which is still in affect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph (f)(1) and such other provisions as may be necessary to assure accomplishment of the objectives of the State plan approved under section 602 of this title, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who (A) received aid under such State plan in or for the month in which court proceedings leading to such determination were initiated, or (B) (i) would have received such aid in or for such month if application had been made therefor, or (ii) in the case of a child who had been living with a relative specified in section 606(a) of this title within 6 months prior to the month in which such proceedings were initiated, would have received such aid in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made therefore.

(1) is a "dependent child" as defined in section 608(a); (2) lives in a "foster family home" or a "child-care institution" as a result of a judicial determination that the child's home is not suitable for him (Section 608(f)); and (3) meets other conditions of Section 608, not in issue here.

Appellants concededly meet all of these conditions, and therefore qualify for AFDC-FC. The additional requirement imposed by the State of Illinois that children are entitled to AFDC-FC only if the foster home in which they are living is maintained by non-relatives is contrary to the decisions of this Court which have prohibited the states from narrowing specific federal eligibility criteria without congressional authorization. *Townsend* v. *Swank,* 404 U.S. 282, 285; *Carlson* v. *Remillard,* 406 U.S. 598, 601; *King* v. *Smith,* 392 U.S. 309, 333.[3]

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3. There have been several cases in which the state has been permitted to impose additional requirements as conditions of eligibility for AFDC. *Snell* v. *Wyman,* 393 U.S. 323, affirming 281 F. Supp. 853 (S.D. N.Y.); *Wyman* v. *James,* 400 U.S. 309; *Charleston* v. *Wohlgemuth,* 405 U.S. 970, affirming 332 F Supp. 1175 (E.D. Pa.); *New York State Department of Social Services* v. *Dublino,* 413 U.S. 405. The requirements upheld in those cases, however, were designed to further the purposes of the Social Security Act, such as seeking employment, permitting a home visit by social workers, or agreeing to reimburse the state for assistance received if funds therefore become available. Here, on the other hand, the Illinois system excludes from benefits a class of children who meet the statutory qualifications and, as shown *infra,* (P. 5), the disqualifying condition of living with a relative is opposed to rather than in furtherance of the design of the Social Security Act.

Appellees argue (Motion to Dismiss or Affirm, p. 15) that because the Social Security Act "indicates that children ought to be placed, when their return to their natural home is rendered impossible, in the home of a relative, and only thereafter in the home of a stranger * * * the law considers relatives of a child on a nearly equal basis with natural parents." From this they conclude that the state may treat children in foster homes of relatives as if they were still living with their parents, and therefore deny them foster-care payments. The argument is a *non sequitur.*

As already noted, the only qualification for foster-care benefits is that the child be "dependent" and that it be living in a foster home or a child-care institution as the result of a judicial determination that its own home is unsuitable. Those conditions were satisfied here, and the child is therefore entitled to foster-care benefits.

Appellees' argument, rather than supporting their conclusion, points in the opposite direction. The denial of foster-care benefits to children living with relatives is likely to make relatives unwilling to accept the children and lead to the placement of children in foster homes of non-relatives. This result would be inconsistent with the policy stated in 42 U.S.C. 401 that the AFDC program is aimed at "encouraging the care of dependent children in their own homes or in the homes of relatives * * *." Indeed, this policy was the primary basis upon which a district court invalidated, as inconsistent with the Social Security Act, the practice of South Dakota of denying foster-care payments for children living with relatives. *Clampett* v. *Madigan,* No. CIV73-4018, decided May 24, 1973 (D. S.D.). See, also, *Jackson* v. *Ohio Department of Public Welfare,* No. C72-182, decided April 17, 1972 (N.D. Ohio).

Appellants contend that *Ramos* v. *Montgomery,* 331 F. Supp. 1197 (S.D. Cal.), affirmed, 400 U.S. 1003, controls this case. That case, however, merely held that where a child was not eligible for foster-care benefits because he did not meet the condition in Section 608 that he had been removed from his home as a result of a judicial determination, the foster parents were not entitled to receive foster-care payments. The present case, however, involves the totally different situation where the child does qualify for foster-care payments but the state denies those payments because relatives provide the foster care.

2. The question is an important one in the administration of the Act. We are informed by the Department of Health, Education and Welfare that in addition to Illinois, 13 other states currently deny full foster-care payments to foster parents caring for related children. Approximately 23 percent of AFDC recipients are living in those states. The issue thus has substantial impact, and warrants definitive resolution by this Court.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

ROBERT R. BORK,
Solicitor General.

FEBRUARY, 1975.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Filed June 14, 1976

[Caption Omitted in Printing]

NOW COME Defendants herein by and through their attorney WILLIAM J. SCOTT, Attorney General of Illinois and respectfully move this honorable court pursuant to Rule 56 of the Federal Rules of Civil Procedure to grant Summary Judgment in their favor, and against Plaintiffs to this cause. In support of such motion Defendants state:

1. This cause comes to be heard on remand from the United States Supreme Court requiring consideration of the statutory issue concerning alleged conflict of Illinois policy and law with the Social Security Act.

2. The Social Security Act neither allows nor requires or in the alternative allows but does not require the State to pay full AFDC-FC funds to children who are wards of the Juvenile Court and placed in the home of a relative.

3. The Illinois statutory foster care scheme is consistent with the purpose, meaning and legislative history of the Social Security Act, and does not therefore violate said Act or the Supremacy Clause of the United States Constitution. Nor does the Illinois Scheme conflict with specific criteria for eligibility as set forth in the Social Security Act.

4. The Program Instruction of the Department of Health, Education and Welfare and the Amicus opinion of the Office of the Solicitor General are inconsistent with and in contravention to prior federal regulatory interpretation of the Social Security Act and in addition are contradictive of the meaning and purpose of the applicable sections of said Act.

5. The Program Instruction of the Department of Health, Education and Welfare #APA-PI-75-9 as issued on October 25, 1974, and as it may be relevant to this cause is not mandatory upon the states and does not carry regulatory weight or force of law.

6. There exists no federal statutory or constitutional right on the part of the Plaintiff class to receive subsidized AFDC-FC foster care payments from the State of Illinois or the federal government.

7. There are no material issues of fact in this matter and relief depends solely on judicial interpretation of law.

8. Defendants, as have Plaintiffs, submit their brief(s) as filed in the Supreme Court of the United States in support of this motion. Said brief is sufficient to address the issue of the alleged statutory conflict as required by remand instructions.

WHEREFORE in light of the foregoing motion and supportive brief and argument, it is respectfully moved that this honorable court grant Defendant's motion for summary judgment and deny summary judgment for Plaintiffs, all costs to be taxed to Plaintiffs.

Respectfully submitted,

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(Of Counsel)

SUPREME COURT OF THE UNITED STATES

No. 77-742

JEROME MILLER, etc., et al.

Appellants.

v.

MARCEL YOUAKIM, et al.

APPEAL from the United States Court of Appeals for the Seventh Circuit. In this case probable jurisdiction is noted. Mr. Justice Stevens took no part in the consideration or decision of this matter.

February 21, 1978